IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 16227 of 2005
WITH
CIVIL APPLICATION No. 12880 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE K.A.PUJ

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?
2	To be referred to the Reporter or not ?
3	Whether their Lordships wish to see the fair copy of the judgment ?
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?
5	Whether it is to be circulated to the civil judge ?

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NOBLE INSTITUTE (EDUCATION) PVT LTD & 1 - Petitioners
Versus
UNION OF INDIA & 3 - Respondents

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Appearance :
MR DV PARIKH for Petitioners.
MR JITENDRA MALKAN for Respondent No. 1.
MR YN RAVANI for Respondent No. 2.
NOTICE SERVED for Respondent(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE
and
HONOURABLE MR.JUSTICE K.A.PUJ

Date : 10/03/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

Rule. Service of rule is waived by Standing Counsel Shri Yogesh Ravani for the respondents.

2. Looking to the facts of the case, the learned advocates have agreed for final hearing of the petition and therefore the petition has been finally heard today.

3. The petitioner has challenged the validity of a demand notice dated 29.06.2005 issued by the Superintendent of Service Tax, Range-V Division I, Ahmedabad – respondent No. 4 herein. By virtue of the said demand notice, the petitioner has been called upon to pay the

service tax on Rs. 95,68,683/- @ 8% which comes to Rs. 7,65,475/- and interest on the said amount.

3. Though a show-cause notice has been challenged in the petition and in normal circumstances, the Court would have disposed of the petition on the ground that it is premature, looking to the facts of the case, in our opinion, it requires some consideration and, therefore, we dispose of the same by giving certain directions.

4. The question involved in the petition is whether service tax is to be paid on the amount recovered by an assessee before 01.07.2003 i.e. the date on which the service tax was made leviable under the provisions of Section 66 of the Finance Act, 1994. It is not in dispute that the amount which is to be made taxable by the respondent authorities was received by the

petitioner before 01.07.2003. It appears to be the case of the respondent authorities that because of a Circular dated 05.11.2003, which is at annexure 2.5 in Civil Application No. 12880 of 2005 filed in the present petition, the authorities believe that the service tax will have to be paid even if the amount is received by the assessee before 01.07.2003, because services in respect of the amount so received are rendered after 01.07.2003. We do not go into the question of law involved in the petition because the petitioner has approached this Court only at the stage when a demand notice has been issued and still there is no adjudication by the respondent authorities. Looking to the facts of the case, we direct that the petitioner shall give reply to the demand notice dated 29.06.2005 and the show cause notice dated 23.11.2005 which has been issued during the pendency of this petition and the concerned authority shall finally

adjudicate the issue.

5. If the authority decides against the petitioner and calls upon the petitioner to make payment of service tax, the demand shall be kept in abeyance till the issue is decided finally by the CESTAT. It would be open to the petitioner to challenge the validity of the order which may be passed by the Assistant Commissioner (Service Tax) or by the Commissioner (Appeals) of Service Tax or by the CESTAT.

6. Till the CESTAT decides the matter finally, the petitioner shall not be constrained to pay the amount of service tax if tax is levied by the respondent authorities. Once the Tribunal decides the matter and if it decides against the petitioner, the petitioner shall act in accordance with law.

7. In view of the above direction given by this Court, learned advocate Shri D.V. Parikh appearing for the petitioner does not press the petition as well as Civil Application No. 12880 of 2005 whereby the petitioner has challenged validity of the Circular referred to hereinabove at this stage.

8. The petition stands disposed of. Rule is made absolute only to the above extent with no order as to costs.

[A.R. DAVE, J.] [K.A. PUJ, J.]

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